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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION TWO

In re L.Y., a Person Coming Under  
the Juvenile Court Law.

B289602

(Los Angeles County  
Super. Ct. No. CK90165)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent.

v.

Y.Y.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County. Pete R. Navarro, Juvenile Court Referee. Affirmed.

Kate M. Chandler, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Sarah Vesecky, Deputy County Counsel for Plaintiff and Respondent.

Y.Y. (mother) appeals from a judgment terminating her parental rights to her daughter, L.Y. (child or minor) (born July 2009) pursuant to Welfare and Institutions Code section 366.26.<sup>1</sup> Mother argues that the juvenile court erred in failing to apply the beneficial parental relationship exception to termination of parental rights found in section 366.26, subdivision (c)(1)(B)(i). In making this argument, mother primarily targets an expert evaluation made pursuant to Evidence Code section 730, arguing that no reasonable trier of fact would make the challenged decision given the problems with the expert evaluation.

Mother bore the burden of establishing an exception to termination of parental rights at the section 366.26 hearing. The juvenile court found that she failed to do so. Where a party with the burden of proof did not carry that burden at trial, “the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.]” (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1528.) Mother has failed to show that the evidence below, taken as a whole, compelled a finding in her favor. Therefore we affirm.

### **BACKGROUND**

In a prior appeal, mother challenged the jurisdictional and dispositional findings and orders made on November 15, 2015, declaring the child a dependent of the court and removing her from mother’s care. On October 3, 2016, this court, in a nonpublished opinion, affirmed the findings and orders of the juvenile court. (*In re [L.]Y.* (Oct. 3, 2016, B269221).) We incorporate portions of the background facts from that opinion:

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise noted.

## **Background facts preceding first appeal**

### ***Investigation***

On March 15, 2015, the Department of Children and Family Services (DCFS) received a referral alleging that mother allowed her child to live in the same residence as a registered sex offender, Ronald D., and among people who appeared to be drug users. Despite numerous visits to the home, messages left, and business cards left at the door, the social worker received no response from mother.

On April 21, 2015, DCFS received a referral alleging caretaker absence/incapacity. Mother was involved in a dispute and was arrested. There was no caretaker present to care for the child. Law enforcement detained the child and brought her to the DCFS office.

DCFS was unable to interview mother due to her incarceration. DCFS obtained Ronald's profile from the Megan's Law database and found he was previously convicted of violating Penal Code section 647.6, which prohibits annoying or molesting any child under 18 years of age. (Pen. Code, § 647.6, subd. (a)(1).)

### **Section 300 petition and detention hearing**

On April 24, 2015, DCFS filed a petition on behalf of the child pursuant to section 300, alleging that mother engaged in a violent altercation with an unrelated adult male in the child's home, sprayed pepper spray in the man's face, and was arrested.

The petition further alleged that on prior occasions for a period of two years, mother established a detrimental and endangering home environment when she allowed the child to reside with an unrelated adult male, Ronald D., who mother knew or reasonably should have known was a registered sex offender. The petition alleged that this detrimental home environment endangered the child's physical health and safety and placed her at risk of harm.

A detention hearing took place on April 24, 2015. The juvenile court found that Yero J. is the child's alleged father.<sup>2</sup> Over mother's objection, the juvenile court found that DCFS had established a prima facie case and detained the child. Mother was permitted monitored visits at least two times per week for two hours or as often as could be arranged.

**Prior child welfare history**

The family had a prior child welfare history in both Georgia and Los Angeles County. The case in Georgia was initiated due to mother testing positive for marijuana at the time of the child's birth. Mother admitted to drinking cannabis tea to treat back pain and participated in voluntary services.

On December 8, 2011, DCFS filed a section 300 petition on behalf of the child after it was reported that mother left the child unattended while she slept all day and the child had been found roaming the shelter where mother and child were staying. The child was reportedly found walking outdoors although the surrounding area was very dangerous. The petition was dismissed without prejudice and mother was provided with voluntary family maintenance services.

DCFS received a referral in June 2013 that mother, who was receiving services from a homeless agency, was under the influence and that her motel room smelled of marijuana. The referral was substantiated but the matter was closed due to loss of contact with the child. The family was homeless and mother's whereabouts were unknown.

A May 2013 referral alleged that mother and her landlord's son were involved in an argument and the landlord's son hit the child in the head with a laundry basket. The referral was closed

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<sup>2</sup> Yero J. is not a party to this appeal.

because the perpetrator was an unrelated male and not a caregiver.

On August 29, 2012, it was reported that while mother was at the Department of Public Social Services making telephone calls to homeless shelters, the child became cranky and mother put her hand over the child's nose and mouth. The child struggled to get away. Mother was asked what she was doing, and mother responded that she always does that and it is the only way to get the child to stop crying. Mother's behavior was disconcerting and the reporting party thought mother might have some undiagnosed mental health issues. The matter was concluded as inconclusive as the family was homeless and DCFS lost contact with them.

On January 17, 2014, it was reported that mother was at the Los Angeles Homeless Agency with the child and started using inappropriate language with the child in the bathroom. Mother was well known at the agency and did not stay in the shelters provided. Mother would not accept Calworks so the workers had to call it something else. The allegations were substantiated as to general neglect, as mother had not provided a stable home for the child, had unmet mental health needs, used marijuana and had a history of leaving the child unsupervised. Mother did not make herself available to DCFS for investigation.

#### **Jurisdiction/disposition report**

On May 11, 2015, DCFS filed a jurisdiction/disposition report. The social worker found no evidence that the child had been abused or mistreated. Due to her age, the child was unable to provide clear answers during an interview. She denied being mistreated, but did not specifically answer whether she had ever been touched in a bad way. The child informed the social worker that Ronald was no longer living with them. She preferred to play and answered no more questions.

Ronald was interviewed. He confirmed that he had moved. He denied that drug users came in and out of the home but confirmed that he and mother use marijuana for back pain. He denied domestic violence, and added that when he and mother had communication problems they sent the child to her room. Ronald admitted being a registered sex offender. He claimed to have made a mistake when he was 18 years old for which he should not be judged. Ronald denied having sexually abused the child.

Mother was also interviewed. She denied the child was neglected or sexually abused. Mother stated that Ronald kissed a teenage girl when he was 18 years old. Mother reported that she used marijuana for medicinal purposes. She denied engaging in domestic violence or loud arguments with Ronald. With respect to her April 21, 2015 arrest mother said that an intruder walked into the bathroom while she was urinating. Mother said the police arrested her because they did not want her to record the incident.

The child was interviewed in foster care on May 6, 2015. When asked about the altercation between mother and the unrelated male, the child indicated that the male was a friend of mother's roommate. He tried to fix the door because mother broke it. Mother told him to get out of the house and sprayed him with mace.

The child did not know anything about Ronald being a sex offender. She denied any inappropriate behavior by Ronald. When asked whether mother and Ronald engage in physical altercations, the child stated: "[W]hen they get mad they hit each other. He hit her only one time and it left scratches on her tummy. He smokes cigarettes." The child did not know Yero J.

On May 5, 2015, the social worker attempted to set up a time to interview mother. Mother stated, "I'm not meeting with

any DCFS employees because they have all dogged me in the past.” Mother refused to meet with the social worker. Yero J.’s whereabouts were unknown and DCFS was unable to interview him.

The child had no known developmental delays and had been homeschooled by mother. The foster mother planned to enroll the child in kindergarten. The foster mother described the child as bright and articulate. The foster mother reported that mother was rude and belligerent with her on the telephone.

***July 1, 2015 interim review report***

DCFS filed an interim review report with the juvenile court on July 1, 2015. DCFS reported that mother had telephoned a social worker from Aspira Foster and Family Services. Mother was angry and directed foul language at the social worker in a persistently elevated voice. Mother made allegations against the child’s foster mother, stating that she used bows in her hair and made her drink milk. Mother appeared to believe that people were conspiring against her. Mother had to be directed repeatedly to use appropriate language during the conversation, which lasted approximately an hour. During the call, mother would start and stop crying suddenly. Mother could be heard banging objects when she raised her voice.

DCFS received information that Ronald had an arrest in 2014 for loitering where children were present. It also appeared he had an outstanding arrest warrant.

Mother continued to refuse to participate in counseling, saying she would not do anything DCFS asked of her, and she refused to disclose her new address. Mother told the child during a visit that “evil and wicked souls” were “keeping [them] apart” and had to be reprimanded about making inappropriate statements during the visit.

On June 23, 2015, the social worker spoke with the property managers at mother's former residence, Dean G. and Deandra F. Dean G. was worried about mother's mental condition because she had written him several irrational notes. Dean G. said mother and Ronald were living in the attic for about six months and did not pay rent. They had been invited to live there by a tenant who was subsequently evicted. Dean G. said the child slept with mother and Ronald and referenced Ronald's status as a registered sex offender. Dean G. stated that mother called the police 42 times because she was angry they were trying to evict her and each time the report was deemed unfounded.

Dean G. said mother disciplined the child by making her stand in a corner for 20 minutes three times per day. He said the child was rarely permitted to go outside and that when the couple wanted alone time, they would lock the child in the bathroom for hours while she screamed "mommy, mommy."

DCFS thought that the child was at risk of harm due to Ronald having an active warrant out for his arrest and mother's belief that it was not problematic for the child to sleep in the same bed with him. DCFS recommended that the juvenile court offer mother reunification services. DCFS was concerned that the mother would flee if the child were released to her.

#### **August 24, 2015 interim review report**

DCFS filed an interim review report with the court on August 24, 2015. Ronald was reportedly at Las Casinas hospital due to a suicide attempt. Ronald reportedly tried to cut his deltoids with a serrated knife.

In addition, there had been a problem with mother's visit on July 1, 2015. Mother took pictures of the child's braided hair to show the court. Mother was also upset that the child had been vaccinated. Mother asked DCFS if she could sue the foster mother because she was abusing her child. Mother caused a



scene and the foster mother had to terminate the visit. As the foster mother was leaving, mother grabbed the child's arm. The foster mother was no longer willing to monitor mother's visits.

When the social worker met with the child on July 7, 2015, the child said school was fine but she did not like her telephone calls with mother. The child stated, "I don't like her, she's annoying." When the social worker asked why, the child stated "She asks a lot of questions and I just want to play."

### **Amended section 300 petition**

On August 24, 2015, DCFS filed a first-amended section 300 petition, adding a count alleging that mother demonstrated erratic, unstable, and paranoid behavior by exposing the child to multiple unsafe and unstable home environments and unsafe and inappropriate adults. The added count further alleged that mother engaged in altercations, yelling matches, and fist fights with different adults while she had custody of the child and that mother's conduct put the child at risk of harm.

### **Jurisdictional hearing**

At the August 24, 2015 jurisdictional hearing, the juvenile court admitted the DCFS reports into evidence.

The juvenile court sustained counts b-2 (alleging that mother caused the child to reside with a registered sex offender); b-3 (alleging that mother has demonstrated erratic, unstable and paranoid behavior by exposing the child to multiple unsafe and unstable home environments and engaged in altercations with other adults); and d-1 (alleging that mother established a home environment which placed the child at risk of sexual abuse). The court dismissed the allegations regarding mother's altercation with the unrelated male. The court noted that section 355.1 shifts the burden to mother to show that the child is not at risk due to Ronald's status as a registered sex offender. The court had no such evidence before it. The court found the child to be

described by section 300, subdivisions (b) and (d), and continued the matter for disposition.

**December 15, 2015 last minute information for the court**

On December 15, 2015, DCFS filed a last minute information for the court indicating that mother did not participate in any services, saying she did not need services. Mother refused to accept referrals or transportation funds. Mother continued to visit with the child two times per week. Mother constantly questioned the child about what she was eating, what she played with, and what television shows she watched. The child appeared uncomfortable when mother questioned her and mother had to be redirected to focus on the visit.

The foster mother noticed that the child would act out after visits.

**Disposition hearing**

The juvenile court conducted the disposition hearing on December 15, 2015.

The juvenile court declared the child a dependent of the court and removed her from mother's custody. While the court noted that previous petitions had been dismissed, it found mother's "behavior has escalated to a point that it is dangerous for [the child] to remain with her . . . ."

On December 15, 2015, mother filed her notice of appeal. On October 3, 2016, this court affirmed the findings and orders of the juvenile court.

**Background facts following first appeal**

***March, June, August, and October 2016 interim review reports***

In its March 18, 2016 interim review report, DCFS reported that mother had not enrolled in reunification services. Mother informed the social worker that the allegations were false and

she did not need to participate in services. Mother continued to participate in monitored visits with the child. The social worker reported some concern with the visits, however, as mother did not allow the child to speak freely about her relationships with her current foster caregiver and children. Mother informed the child that she is “not related to them” and that she had been “kidnapped.” When the child attempted to speak of her school friends, mother quickly informed the child that they were not her friends. The child appeared confused and uneasy. Mother engaged in other inappropriate behavior such as bringing a rat to a visit, allowing it to roam freely and leave its droppings on the couch. The child showed difficult behavior before and after visits, such as urinating on herself and acting defiantly. On one occasion the child informed her foster mother that she did not want to visit with mother.

In the June 14, 2016 status review report, DCFS reported that the child had been moved to a new foster home on April 21, 2016. The previous foster mother had requested the change because mother followed her and alleged that she was not properly caring for the child. The child was doing well in her new placement. Mother continued to state that she did not have to participate in services, and insisted that she won a court case. Mother refused to communicate with the social worker. Mother continued to participate in weekly visits, but was late on numerous occasions and still needed to be redirected at times. The child enjoyed the visits and reported missing her mother.

On May 24, 2016, the child was moved to a new foster home, following allegations that the previous foster mother was not providing appropriate supervision and behavioral problems on the part of the child. The foster mother reported that mother had not contacted her in over a week despite the foster mother

leaving several messages in an effort to schedule a visit. Mother was inconsistent about telephone calls to the child.

On July 1, 2016, the child was again re-placed due to inappropriate behavior. The child spent 17 days in a shelter before being placed with Ms. W. and Mr. A. Mother visited the child twice while she was in the shelter. A visit was cancelled on July 26, 2016, due to mother's late arrival. Mother missed another visit on August 1, 2016. The child was upset and unresponsive when mother tried to contact her by telephone. At the August 16, 2016 progress hearing, the court found mother's progress to be minimal but ordered DCFS to continue to provide her with reunification services, and gave it discretion to liberalize her visits.

The October 25, 2016 status review report stated that the child continued to be placed with Ms. W. and Mr. A., with whom she was building a positive relationship. Mother was not participating in court-ordered services. Mother was consistently attending weekly visits with the child. However, she continued to demonstrate inappropriate behavior during visits, such as telling the child she had been kidnapped, instructing her not to speak to social workers because they were evil, and showing her inappropriate videos on YouTube. On one occasion, mother had to be escorted out of the foster family agency by a police officer because she refused to leave. On September 16, 2016, the child refused to enter DCFS's office because she did not want to visit mother. The child hit, pushed, yelled at, and ignored mother. Ms. W reported that on several occasions the child reported that she did not want to visit with mother, and refused to speak with mother on the telephone on several occasions as well. Mother arrived late to several visits, and the child appeared upset. DCFS recommended that the court terminate reunification services and set a hearing pursuant to section 366.26. DCFS also

reported that Ms. W. and Mr. A. were interested in adopting the child.

### **December permanency review hearing**

DCFS prepared a report for the 12-month review hearing, on December 14, 2016. The child remained in the same foster home with Ms. W. and Mr. A. She was healthy, on track developmentally, doing well in school and receiving good care. The foster parents expressed a willingness to provide permanency. Mother was not participating in any reunification services and refused to provide updated information. Mother provided a report from a psychologist, Dr. Stepanoff, who diagnosed her with adjustment disorder and suggested therapy. Mother also provided letters indicating she had been attending therapy. She allegedly attended therapy with Dr. Cassidy between October 4, 2016 and December 12, 2016. Dr. Cassidy provided a letter indicating that mother had addressed all of her psychological issues and was ready to resume custody of the child. Mother also produced a letter allegedly authored by Dr. Aoki, a clinical psychologist, reporting that he saw mother once for an initial evaluation and that her issues were “transient.” Finally, mother produced a letter indicating that she had registered for parenting classes on October 15, 2016, and had completed two classes.

Mother was consistently visiting the child, and the visits were usually appropriate. However, on a few occasions she told the child that she would be returning home at the next court hearing. Also, on a few occasions the child did not want to meet with mother, and refused to speak with mother on the telephone.

The matter was scheduled for a contested section 366.22 permanency review hearing,<sup>3</sup> however, mother's counsel had issued a subpoena for mother's therapist, who failed to appear. Thus, the juvenile court continued the matter.

### **January and February 2017 reports**

In January 2017, DCFS reported that the child had, on two occasions in December, strongly objected to visits with mother. Mother was rude and refused to sign in for visits at the DCFS office. In addition, mother had telephoned the social worker and informed her that she did not want the child to receive immunizations or medication for her asthma. Mother stated, "It is my right and I do not want her to get any of that." On the same day, the child was crying and insisting that she did not want to visit with mother.

In a February 16, 2017 report DCFS noted that mother failed to show up for a visit on January 18, 2017. A February 1, 2017 visit ended early because the child threw a tantrum and hit and kicked mother. The child continued to report that she did not want to visit mother.

Dr. Aoki advised that mother was no longer in services. Dr. Cassidy stated that mother had instructed him not to speak with anyone. However, Dr. Cassidy revealed that mother had not informed him that she had an open DCFS case. Dr. Cassidy's office did not accept individuals with open cases or custody issues. Mother was no longer receiving services from him.

On February 23, 2017, DCFS reported that Mr. A. had telephoned indicating that the child refused to leave her after

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<sup>3</sup> At a section 366.22 hearing, which comes at the end of the 18-month reunification period, "the court must return children to their parents and thereby achieve the goal of family preservation or terminate services and proceed to devising a permanent plan." (*Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 704.)

school program because she did not want to visit mother. The visit was cancelled. The after school program reported that mother had been calling and inquiring about the child. Mother had also visited the campus. Mother also failed to appear for a visit scheduled for February 10, 2017.

### **Contested 366.22 hearing**

The contested section 366.22 hearing was held on February 23, 2017. The court terminated mother's reunification services, ordered visits once per week in the DCFS office, and scheduled a hearing pursuant to section 366.26 to select and implement a permanent out of home placement for the child.

### **June 2016 status review report and commencement of section 366.26 proceedings**

The child continued to reside with Ms. W. and Mr. A, with whom the child expressed a desire to remain. They continued to express a desire to adopt the child, who seemed comfortable and at ease in their presence. Mother was visiting weekly and her visits remained monitored at the DCFS office. While mother was visiting more consistently, she continued to arrive over 10 minutes late for the one-hour visits. Overall the visits went well. DCFS recommended that the juvenile court terminate parental rights and free the child for adoption. It identified Ms. W. and Mr. A. as the prospective adoptive parents.

In a last minute information for the court filed on September 9, 2017, DCFS reported that in response to a question as to where she wanted to live, the child responded "I want to live with my real mom." She then indicated that she wanted to live with her mother's friend, so she could "be with" her mom. The child then became upset, and told the social worker it was none of her business where she wanted to live. After the child spoke with Ms. W. and Mr. A. alone, she stated, that she wanted to live with them.

The section 366.26 permanency planning hearing commenced on September 27, 2017. After Mr. A.'s testimony, the court indicated that it did not have sufficient information to make a well-reasoned decision. It ordered a home bonding study pursuant to Evidence Code section 730, before continuing the contested section 366.26 hearing.

### **Bonding study**

The bonding study was conducted by Dr. Chavez, a licensed psychologist. He evaluated mother, Mr. A., Ms. W., and the child. The juvenile court acknowledged receipt of the study on November 29, 2017.

During his evaluation of mother, Dr. Chavez noted that mother referred to Mr. A. and Ms. W. as "sociopaths." Mother also indicated that the child had developed Stockholm Syndrome and needed help. It was Dr. Chavez's impression that mother had an underlying psychological disorder, but he had not been asked to do psychological testing. Mother told Dr. Chavez that she was separated from Ronald and had terminated her relationship with him.

Ms. W. and Mr. A. reported having formed an emotional bond with the child, and felt that she had done the same. Mr. A. indicated that sometimes the child did not want to engage with mother, did not want to speak with mother, or hung up on her.

The child stated that she wanted to return to mother. However, Dr. Chavez noted that the child was aware that he would be interviewing mother. When Dr. Chavez observed the child and mother together, he noted that mother "dominated the interaction" and although the child expressed affection, she looked distressed doing so. The child regressed in her behavior and acted more like a baby. The quality of the interaction seemed positive, but Dr. Chavez noted an "underlying anxious



attachment.” It appeared that mother triggered feelings of guilt in the child.

Dr. Chavez observed the child in her home environment with Ms. W. and Mr. A. He reported that it was readily apparent that the child had a strong emotional bond with her caregivers and was comfortable in their home. Dr. Chavez’s overall impression was that mother had transmitted her “intense dislike” for Ms. W. and Mr. A. While the child had bonded with the couple, “the mixed emotional signal[s] she receive[d] from her mother create[d] conflict, guilt, and confusion for her.” Dr. Chavez opined that the child was more securely attached to her caregivers than mother.

Dr. Chavez concluded that allowing ongoing visitation with mother along with a plan of guardianship would “only continue to create conflict and emotional confusion for the child.” He recommended that, for the best long term outcome, Ms. W. and Mr. A. be considered as possible adoptive parents for the child. Dr. Chavez noted that allowing mother ongoing visits “will not resolve [the child’s] emotional problems and she would likely suffer from ongoing trauma.”

**January 2018 section 388 petition and request for restraining order**

Mother filed a petition pursuant to section 388 on January 23, 2018. The court summarily denied it because it failed to describe which orders it sought to change, and contained narrative statements relating to trial strategies.

Mother also filed a request for a restraining order against the child’s foster mother, Ms. W., in a different court. The request, filed on January 18, 2018, was denied pending a hearing because it did not show acts of violence, threats of violence, or a course of conduct that harassed mother. In her request, mother made numerous allegations against Ms. W. and Mr. A., including

that they were “garbage, low-life sociopaths” and “degenerate-scum fosters” who lacked the “chromosomal make up” to implement “logical reasoning and moral turpitude.” Mother asserted that DCFS continued to “cover” for these “two abusers” as “retaliation” for a federal lawsuit she filed against DCFS in 2015.

### **Continuation of section 366.26 proceedings**

The section 366.26 proceedings resumed on February 5, 2018. The court admitted Dr. Chavez’s report into evidence with no objection.

After extensive testimony, Dr. Chavez opined that damage the child would suffer if she were to continue to have contact with mother would be more severe than if she were denied contact with mother. Dr. Chavez did not believe the bond between mother and child was healthy. He testified that he would have benefitted from a psychological evaluation of mother. He further testified that the child was securely bonded to her caregivers.

The child also testified over her counsel’s objection. She liked her visits with her mother, but did not talk to her mother about things that were happening at school. If she had a problem at school, she talked to her teachers or caregivers. She wanted to continue visits with her mother because she liked spending time with her. She testified that she would feel sad if she never got to see mother again. When asked if she would feel sad if she never saw her caregivers again, she responded, “No. Actually, a little bit.”

The court inquired of mother regarding the restraining order she filed. Mother stated that she was seeking “protective custody from the current foster facilitator.” The court informed mother that she had filed her request in the wrong court. The court further informed mother that she was not supposed to have the foster parents’ address or make contact with them.

**March 2018 section 388 petitions**

Mother filed two additional petitions pursuant to section 388 on March 13, 2018 and March 19, 2018. The juvenile court summarily denied the petitions.

**Resumed section 366.26 hearing**

The section 366.26 hearing resumed on May 16, 2018. The court admitted into evidence a four-page psychological report over DCFS's objection. The court also admitted a progress letter from mother's psychotherapist. The court noted that the probative issues at that point were exceptions to adoption and a finding of detriment.

Mother testified that Dr. Chavez spoke with her for only 22 minutes and was not able to sufficiently assess her character. Dr. Chavez spent only 10 minutes with mother and the child together, and the child was upset during this time because it was during the time they were supposed to be having a visit. Mother described positive visits and stated that the child confided in her regarding things that had happened at school and with friends. Mother testified that the child referred to her as "mommy" and never ceased to have a healthy attachment to her as a parent. Mother admitted that she did not attend any of the child's doctor visits, and had not asked to do so. Mother testified that she helped the child with her math homework approximately two to three weeks prior to the hearing.

After mother's testimony, the court heard argument. Mother's counsel argued that the court should give little weight to Dr. Chavez's assessment, and asked the court to find the beneficial parental relationship exception to termination of parental rights. Mother's counsel asked that guardianship be the child's permanent plan.

The child's counsel, and DCFS, argued that the court should not apply the beneficial parental relationship exception.

DCFS noted that visitation had decreased, mother was frequently late to visits, and mother did not take advantage of telephone contact that was available to her. DCFS argued that the bond between mother and child was not sufficient to satisfy the beneficial parental relationship exception.

The court issued its ruling on June 21, 2018. The court noted that it had “put this matter over” in order to “review the previous volumes.” The court further noted, “There’s a significant history to this case.” The court “read and considered the evidence as provided by all parties.” The court referenced Dr. Chavez’s study, noting that the bond between mother and child is an “anxious bond as opposed to a secure, a positive bond.” The court noted that there was evidence that the child is likely to be adopted. It found that the bond between mother and child did not rise to the level that terminating parental rights would be detrimental to the child. The court terminated mother’s parental rights.

On June 21, 2018, mother filed a notice of appeal from the order terminating her parental rights.

## **DISCUSSION**

Mother argues that the juvenile court erred in failing to apply the beneficial parental relationship exception to termination of parental rights. Mother’s primary argument is that a reasonable trier of fact would not have relied upon Dr. Chavez’s bonding study as the sole basis for rejecting the beneficial parental relationship exception to termination of parental rights.

### **I. Applicable law and standard of review**

Following an 18-month permanency review hearing held pursuant to section 366.22, the juvenile court either orders the return of a child to parental custody or terminates reunification services and sets a hearing for the selection of a permanent plan

pursuant to section 366.26. (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 295.) In this case, the juvenile court did not return the child to mother, but set a permanency planning hearing pursuant to section 366.26.

At a permanency planning hearing, the juvenile court must choose a course of action in the order of preference set forth in section 366.26, subd. (b). Under that provision, the juvenile court's preferred objective is to "[t]erminate the rights of the parent or parents and order that the child be placed for adoption." (§ 366.26, subd. (b)(1).)

After the juvenile court determines that a child is adoptable, the court is required to terminate parental rights and order the child placed for adoption. (§ 366.26, subd. (c)(1).) This mandate is avoidable only in limited circumstances. One such circumstance is when the court "finds a compelling reason for determining that termination would be detrimental to the child" due to a parent that has "maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) A parent seeking to show the beneficial parental relationship exception must show at least two circumstances: (1) the parent has maintained regular visitation and contact with the child; and (2) the parent's relationship with the child promotes the well-being of the child to such a degree as to outweigh the benefit the child would gain from being in a permanent home with new, adoptive parents. (*In re K.P.* (2012) 203 Cal.App.4th 614, 621.)

The burden of proof is on the parent seeking to establish the existence of this exception. (*In re I.W.*, *supra*, 180 Cal.App.4th at p. 1527.) To meet the burden of proof, the parent must show "more than frequent and loving contact, an emotional bond with the child, or pleasant visits -- the parent must show that he or she occupies a parental role in the life of the child.

[Citation.]” (*Ibid.*) This exception is difficult to show where a parent has failed to reunify and establish a parental, rather than “caretaker or friendly visitor” relationship with the child. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 51.)

The applicable test to review the sufficiency of the evidence at issue on appeal is the substantial evidence test. (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 564.) Under this test we are bound by the established rule that ““all factual matters will be viewed most favorably to the prevailing party [citations] and in support of the judgment.”” (*In re I.W., supra*, 180 Cal.App.4th at p. 1527.) In brief, we generally look only at the evidence supporting the judgment. (*Ibid.*) Where the issue on appeal turns on whether the parent met her burden of showing an exception to termination of parental rights, the substantial evidence standard may be phrased as “whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.]” (*Id.* at p. 1528.) We may overturn a decision under this standard only if “the appellant’s evidence was (1) ‘uncontradicted and unimpeached’ and (2) ‘of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.’ [Citation.]” (*Ibid.*)

The juvenile court had a long history and many facts to consider in rendering its decision that mother failed to meet her burden of showing the beneficial parental relationship exception to termination of parental rights. It is the trial court’s role to assess the credibility of this evidence. “We have no power to judge the effect or value of the evidence, to weigh the evidence, to consider the credibility of witnesses or to resolve conflicts in the evidence or the reasonable inferences which may be drawn from that evidence. [Citations.]” (*In re Casey D., supra*, 70 Cal.App.4th at pp. 52-53.) In short, we may not reweigh the evidence or substitute our judgment for that of the trial court.

(*Ibid.*) However, we may reverse a judgment if it is based upon evidence that is “incredible” or “inherently improbable.” (*Nash v. Prudential Ins. Co. of America* (1974) 39 Cal.App.3d 594.)

## **II. The evidence supports the juvenile court’s judgment**

In rendering its decision that the beneficial parental relationship exception to termination of parental rights did not apply, the juvenile court noted that one of the reasons it withheld its decision from the date of the previous hearing was to “review the previous volumes.” The court noted, “There’s significant history to this case.” The court specified that it had “read and considered” all of the evidence provided by “all parties.”

The evidence in this case included substantial evidence supporting the juvenile court’s determination that mother had not established the beneficial parental relationship exception. Mother was required to show: (1) regular and consistent visitation; and (2) a significant bond, sufficient to outweigh the benefit of a permanent home.

The evidence regarding mother’s visitation was conflicting. Mother missed numerous visits, which caused the child distress. In addition, mother was often late to visits. Visits were terminated due to mother’s inappropriate conduct, and the child on numerous occasions refused to visit with mother or speak to her on the phone. DCFS pointed out the inconsistencies in visitation to the juvenile court during argument. The juvenile court considered this evidence in rendering its decision, and was entitled to give it considerable weight. We may not substitute our judgment for that of the juvenile court.

The evidence regarding the bond between mother and the child is also conflicting. The parties agreed to the court’s appointment of expert, Dr. Chavez. Dr. Chavez opined that mother and the child had an unhealthy, anxious bond. Dr. Chavez further opined that the damage the child would suffer if

she were to continue to have contact with mother would be more severe than if the child was denied contact with mother. Further, as noted above, there were times when the child refused or resisted visiting mother. There were also times when the child refused to speak with mother on the phone or hung up on her. The child was occasionally aggressive with mother or ignored her during visits. Mother's visits never progressed beyond monitored visits, and mother attempted to sabotage and interfere with the child's placements. Further, mother did not attend doctor visits, and the child reported that she did not discuss problems at school with mother. Instead, she would discuss such problems with her teachers or caregivers. Under the circumstances, the juvenile court did not err in determining that mother did not occupy a parental role in the life of the child. (*In re I.W.*, *supra*, 180 Cal.App.4th at p. 1527.)

*In re Scott B.* (2010) 188 Cal.App.4th 452, is distinguishable. The child, who was autistic, was nearly nine years old when he was placed with his first foster family, and had just turned 11 when his mother's parental rights were terminated. Thus, he had spent nearly all his life living with his mother. He had consistently visited with his mother, always looked forward to the visits, and remained strongly bonded with his mother. (*Id.* at pp. 471-472.) Significantly, in contrast to this case, the social worker clearly opined, and all parties agreed, that it would be detrimental for this child's relationship with his mother to be disrupted. When it terminated parental rights, the trial court left the decision as to the child's future visits with the mother within the foster mother's discretion. (*Ibid.*) Because continuing contact between the child and the mother could not be guaranteed after termination of parental rights, the Court of Appeal reversed the termination of parental rights on the basis of



the beneficial parental relationship exception. (*Id.* at pp. 471-473.)

Similarly, in *In re S.B.* (2008) 164 Cal.App.4th 289, a juvenile court decision to terminate parental rights was reversed on the basis of the beneficial parental relationship exception. A bonding study conducted by a professional indicated that because the parental bond between the parent and child was fairly strong, there was a potential for harm if that bond were severed. (*Id.* at p. 296.) In addition, a social worker opined that the best outcome would be to allow the child to continue her relationships with her parents. (*Id.* at p. 295.)

Here, in contrast, there was evidence that the bond between mother and the child is not a healthy, positive one, and that the damage the child would suffer if she were to continue to have contact with mother would be more severe than if she were denied contact with mother. The record as a whole supports the juvenile court's decision that the benefits of adoption outweighed any interest the child had in maintaining a relationship with mother. Under the circumstances, we decline to find error.

### **III. Dr. Chavez's report**

Mother focuses most of her arguments on challenging the value of Dr. Chavez's report. She argues that the report provided the only rationale for the juvenile court's decision not to apply the beneficial parental relationship exception. Mother's position is flawed for several reasons.

First, the juvenile court stated clearly, on the record, that it had read and considered all of the evidence contained in the extensive record. Thus, the record of the proceedings does not support mother's position that Dr. Chavez's report provided the court's sole rationale.

Second, it is the obligation of the juvenile court to focus on the best interests of the child throughout the proceedings. (§ 202,

subd. (d) [“Juvenile courts . . . shall consider . . . the best interests of the minor in all deliberations pursuant to this chapter”].) In doing so, the juvenile court has an obligation to consider carefully all of the circumstances involved. Pursuant to Evidence Code section 664, we presume that this official duty has been regularly performed, and that the court carefully considered all evidence before it. Mother’s citations to the reporter’s transcript do not suggest otherwise.

We decline mother’s invitation to reweigh the significance of Dr. Chavez’s study. We similarly decline to find that Dr. Chavez’s opinion was so inherently improbable that no reasonable person could believe it. (*Nash v. Prudential Ins. Co.*, *supra*, 39 Cal.App.3d at p. 598.) The record shows that Dr. Chavez was qualified and agreed upon as an expert by all parties. Mother did not object to the admission of his report into evidence, nor does she do so on appeal. Under the circumstances, we are required to view the bonding study most favorably to the prevailing party and in support of the judgment. (*In re I.W.*, *supra*, 180 Cal.App.4th at p. 1527.) Dr. Chavez’s credibility, including his acknowledgement of the limitations of his study, were exclusively for the juvenile court to weigh. (*In re S.A. (2010)* 182 Cal.App.4th 1128, 1148-1149 [““it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of facts upon which a determination depends. [Citations.]””])

Finally, mother neglects to address that it was her burden to establish the beneficial parental relationship exception to termination of parental rights. (*In re Lorenzo C. (1997)* 54 Cal.App.4th 1330, 1345 [the parent asserting the applicability of a statutory exception to termination of parental rights bears the burden of proof].) Even if we were to accept her attack on Dr. Chavez’s study, such an outcome would not mandate a finding

that the exception applied, considering all of the other evidence in the record. In short, even without Dr. Chavez's study, the evidence does not compel a finding in mother's favor.

**DISPOSITION**

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

\_\_\_\_\_, J.  
CHAVEZ

We concur:

\_\_\_\_\_, P. J.  
LUI

\_\_\_\_\_, J.  
HOFFSTADT